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1st Session

SENATE

{ REPORT
110-237

TO REFORM MUTUAL AID AGREEMENTS
FOR THE NATIONAL CAPITAL REGION

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 1245

TO REFORM MUTUAL AID AGREEMENTS FOR THE NATIONAL
CAPITAL REGION



DECEMBER 6, 2007.—Ordered to be printed

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TO REFORM MUTUAL AID AGREEMENTS FOR THE
NATIONAL CAPITAL REGION

DECEMBER 6, 2007.—Ordered to be printed

Mr. LIEBERMAN, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 1245]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 1245), to reform mutual aid agreements for the National Capital Region, having considered the same reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

S. 1245 amends Section 7302 of the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458), to make technical changes affecting mutual aid agreements in the National Capital Region.

II. BACKGROUND AND NEED FOR THE LEGISLATION

The Intelligence Reform and Terrorism Prevention Act of 2004¹ (IRTPA) authorized the governments of the National Capital Region (NCR), an area composed of the District of Columbia and surrounding local jurisdictions in Maryland and Virginia, to enter into mutual aid agreements for emergency mitigation, management, response, and recovery. Since the enactment of statutory authorization, a model mutual aid agreement has been approved by the majority of the jurisdictions in the NCR, including 20 of the 21 jurisdictions in the Metropolitan Washington Council of Governments (COG), the State of Maryland, the Commonwealth of Virginia, the Metropolitan Washington Airports Authority (MWAA), and the Washington Metropolitan Area Transit Authority (WMATA). As the jurisdictions began working on the mutual aid agreement, concern arose that IRTPA included two omissions that could hinder the establishment of an effective and robust mutual aid agreement in the NCR.

The first is that certain special purpose governmental authorities, like water and wastewater utilities, were not explicitly included in the original language as entities that could participate in the mutual aid agreement. Under current law, the functions allowed to be included in the mutual aid agreement are general purpose governmental activities, such as law enforcement, fire and rescue, emergency health and medical services, transportation, communications, public works and engineering, and mass care.² Like these services, water and wastewater services are interconnected and interdependent within the NCR. For example, the District of Columbia Water and Sewer Authority services portions of Maryland and Virginia in addition to the District. The Committee concurs with the jurisdictions in the NCR that security, safety, and continuity of drinking water and wastewater systems must be maintained during an emergency. S. 1245 allows water and wastewater utilities to be covered under any mutual aid agreement established by the NCR. The amended language also covers the MWAA and WMATA as such special purpose governmental entities and does not require their specific designation in the statute.

The second is that IRTPA only allowed employees and volunteers who were specifically committed to the mutual aid agreement prior to an emergency to be included under the law. It is anticipated that the NCR's localities will rely on a variety of authorized agents and volunteers to assist in fulfilling their mutual aid response obligations. The law currently requires that all agents and volunteers be "committed in a mutual aid agreement"³ to prepare for or respond to an emergency. The members of the NCR have determined that it is not likely that a complete list of agents and volunteers will be identified and become parties to a mutual aid agreement prior to an emergency. Instead, it is more likely that agents and volunteers will be associated with a locality through a mechanism other than an actual mutual aid agreement. S. 1245 will provide the region with the flexibility to cover under the mutual aid agreement all employees and authorized volunteers who respond to a disaster on

¹ P.L. 108-458.

² Id., Sec. 7302(b)(1)(A).

³ Id., Sec. 7302(a)(4).

behalf of a state or local government or independent authority within the NCR. Additionally, the language authorizes formal inclusion of volunteer entities such as incorporated volunteer fire companies, not just their individual members.

III. LEGISLATIVE HISTORY

S. 1245 was introduced by Senators Cardin, Mikulski, and Warner on April 26, 2007, and was referred to the Committee on Homeland Security and Governmental Affairs. The bill was referred to the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia on June 6, 2007. Senator Webb was added as a cosponsor on July 26, 2007. The bill was polled out of the Subcommittee on July 31, 2007.

On August 1, 2007, the Committee considered S. 1245. The Committee ordered the bill favorably reported without amendment to the full Senate by voice vote. Members present were Lieberman, Levin, Akaka, Carper, Pryor, Landrieu, McCaskill, Voinovich, Coleman, Coburn, Warner, and Sununu.

IV. SECTION-BY-SECTION ANALYSIS

Section 1. Reform of mutual aid agreements for the National Capital Region

This section amends IRTPA by removing the reference to “authorized volunteers” in subsection 7302(a)(4). As the subsequent language makes clear, such volunteers would be covered through their organizational affiliation, for example, a local volunteer fire department. The section also expands the governmental entities authorized to participate in such mutual aid agreements to include all governmental agencies, authorities, and institutions with the power to sue in their own name. This change will specifically allow for the inclusion of water and wastewater utilities in the mutual aid agreements. The language then removes the specific references to the Washington Metropolitan Area Transit Authority and the Metropolitan Washington Airports Authority because these organizations are covered by the general “governmental authority” language.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirement of paragraph 11(b)(1) of rule XXVI of the Standing Rules of the Senate the Committee has considered the regulatory impact of this bill. CBO states that there are no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and no costs on State, local, or tribal governments. The legislation contains no other regulatory impact.

VI. ESTIMATED COST OF LEGISLATION

AUGUST 22, 2007.

Hon. JOSEPH I. LIEBERMAN,
Chairman, Committee on Homeland Security and Governmental Af-
fairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1245, a bill to reform mutual aid agreements for the National Capital Region.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Daniel Hoople.

Sincerely,

PETER R. ORSZAG.

Enclosure.

S. 1245—A bill to reform mutual aid agreements for the National Capital Region

Under the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458), the federal government may enter into an agreement with state and local governments in the National Capital Region (including the District of Columbia, the surrounding counties of Maryland and Virginia, and the city of Alexandria) for the provision of police, fire, rescue and other services during a disaster or training exercise. Organizations may be liable for acts or omissions of its employees, including volunteers, while rendering aid as part of a mutual aid agreement. S. 1245 would remove that liability for authorized volunteers of organizations that are party to the agreement. The bill also would allow other state and local entities in the National Capital Region to become a party to a mutual aid agreement.

CBO estimates that implementing S. 1245 would have no significant federal cost over the 2008–2012 period. Enacting this legislation would not affect direct spending or revenues. S. 1245 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Daniel Hoople. This estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

VIII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the following changes in existing law made by the bill, as reported, are shown as follows: (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**INTELLIGENCE REFORM AND TERRORISM
 PREVENTION ACT OF 2004 P.L. 108–458**

* * * * *

SEC. 7302. NATIONAL CAPITAL REGION MUTUAL AID.

“(a) DEFINITIONS. In this section:

“(1) * * *

* * * * *

“(4) EMPLOYEE.—The term ‘employee’ means the employees of the party, [including its agents or authorized volunteers,] who are committed in a mutual aid agreement to prepare for or who respond to an emergency or public service event.

“(5) LOCALITY.—The term ‘locality’ means a county, city, [or town within the State of Maryland or the Commonwealth of Virginia and within the National Capital Region.] *town, or other governmental agency, governmental authority, or governmental institution with the power to sue or be sued in its own name, within the National Capital Region.*

* * * * *

“(d) LIABILITY AND ACTIONS AT LAW.—

(1) IN GENERAL.—Any responding party or its officers or employees rendering aid or failing to render aid to the District of Columbia, the Federal Government, the State of Maryland, the Commonwealth of Virginia, or a locality, under a mutual aid agreement authorized under this section, and any party or its officers [or employees] *or employees, or agents* engaged in training activities with another party under such a mutual aid agreement, shall be liable on account of any act or omission of its officers [or employees] *or employees, or agents* while so engaged or on account of the maintenance or use of any related equipment, facilities, or supplies, but only to the extent permitted under the laws and procedures of the State of the party rendering aid.

“(2) ACTIONS.—Any action brought against a party or its officers [or employees] *or employees, or agents* on account of an act or omission in the rendering of aid to the District of Columbia, the Federal Government, the State of Maryland, the Commonwealth of Virginia, or a locality, or failure to render such aid or on account of the maintenance or use of any related equipment, facilities, or supplies may be brought only under the laws and procedures of the State of the party rendering aid and only in the Federal or State courts located therein. Actions against the United States under this section may be brought only in Federal courts.